

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TONY DEWAYNE SCALLION	§	
v.	§	CIVIL ACTION NO. 6:05cv496
		(Crim. No. 6:03cr39)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Tony Scallion, proceeding *pro se*, filed this motion to vacate or correct sentence under 28 U.S.C. §2255 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Scallion complains that he received ineffective assistance of counsel from his attorney, F.R. (Buck) Files, in connection with a guilty plea which Scallion entered on charges of possession with intent to distribute and distribution of more than five grams of methamphetamine, as well as carrying of a firearm during a drug trafficking crime. He says that Files failed to seek suppression of the evidence or challenge the legality of the arrest, misinformed him of the statutory maximum sentence, did not challenge the offense level on Sixth Amendment grounds, did not take a direct appeal, and incorrectly told him that if he persisted in demanding a suppression hearing, he would receive an enhanced sentence upon a plea of guilty.

The Magistrate Judge ordered the Government to answer, and Scallion filed a response to the answer. After review of the record in the case, including tapes of the guilty plea proceeding and the sentencing proceeding, the Magistrate Judge issued a Report on July 14, 2006, recommending that Scallion's motion to vacate be denied. The Magistrate Judge concluded that Scallion's claims were

barred by the statute of limitations and that these claims also lacked merit. After seeking and receiving an extension of time, Scallion filed objections to the Magistrate Judge's Report on September 14, 2006.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original motion to vacate and attached exhibits, the answer filed by the Government, Scallion's response thereto, the Report of the Magistrate Judge, the Movant's objections thereto, and all pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Movant are without merit. It is accordingly

ORDERED that the Movant's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence be and hereby is DISMISSED with prejudice. It is further

ORDERED that any and all motions which may be pending in this action, including the Movant's motion to toll the limitations period (docket no. 4), are hereby DENIED.

So ORDERED and SIGNED this 9th day of October, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE